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No. 38.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

THE UNITED STATES OF AMERICA, Appellant,

vs.

HARRY MURDOCK, Appellee.

On Appeal from the District Court of the United States for the Southern District of Illinois.

APPELLEE'S PETITION FOR REHEARING.

EDMUND BURKE,
Springfield, Ill.,
HAROLD J. BANDY,
Granite City, Ill.,
Attorneys for Appellee.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 4477.

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On Appeal from the District Court of the United States for the Southern District of Illinois.

APPELLEE'S PETITION FOR REHEARING.

MAY IT PLEASE THE COURT:

Fully appreciating the impropriety of burdening this Honorable Court with a petition that is based upon frivolous grounds or filed only to accomplish delay, but with the firm conviction that an important question involving the constitutional rights of appellee is here involved that justifies resubmission and further consideration of this case, we humbly and earnestly present this petition for a rehearing.

The substance of the pertinent facts in this case are concisely stated in the first paragraph of your opinion, in which your Honors say:

> "Appellee filed his individual federal income tax returns for 1927 and 1928, and in each year deducted twelve thousand dollars ($12,000.00) which he claimed to have paid to others. An authorized revenue agent summoned appellee to appear before him and disclose the recipients. Appellee appeared, but refused to give the information on the ground that to do so might incriminate and degrade him."

The record shows that each time he refused to answer a question he said: "I might give information that might incriminate and (or) degrade myself."

We respectfully submit that the question presented by the refusal of appellee to answer differs materially from the situation disclosed in the Sinclair case (Sinclair v. United States, 279 U. S. 263, 73 Law. Ed. 692). Mr. Sinclair refused to answer a question propounded to him by Senator Walsh, a member of the committee on public lands and surveys of the United States Senate, on the ground that the committee had exhausted its power, and that the particular subject under investigation was at that time pending in legal actions and was a judicial question, which was determinable only in the courts. Your opinion in that case states that "he disclaimed any purpose to invoke protection against self-incrimination and asserted there was nothing in the transaction which could incriminate him," and that he said: "I shall reserve any evidence I may be

able to give for those courts to which you and your colleagues have deliberately referred all questions of which you had any jurisdiction, and shall respectfully decline to answer any questions propounded by your committee." This was a deliberate, intentional refusal to answer. He did not base his refusal upon any right conferred by the Fifth Amendment or any other section of the Federal Constitution. Your opinion in that case says that "the refusal to answer was deliberate."

We respectfully submit that appellee's refusal to answer certain questions was not deliberate. His conduct evinced no intention to hold in contempt the investigation being conducted by the federal revenue agent, or to remain silent for arbitrary reasons not supported by law. His excuse for not answering certain questions plainly shows that he feared his answers would incriminate him. When questions were asked that did not call for incriminating replies he answered promptly and frankly. It was only when the questioner submitted queries requiring answers containing the nucleus of a criminal prosecution of him that he asserted the privilege of silence on the ground that his answers would incriminate him.

He did not say that he refused to answer because his answers might subject him to criminal prosecution in a state court for violation of a state law. We respectfully submit that he did not in any instance voluntarily limit his claim of privilege to a fear of criminal prosecution in a state court. His answers were invariably broad enough

to cover prosecutions in federal courts for violations of federal laws, and broad enough to invoke the protection of the Fifth Amendment to the Constitution of the United States.

Although it is true, as stated in the opinion filed in this case, that "the privilege of silence is solely for the benefit of the witness and is deemed waived unless invoked," we respectfully submit that the record in this case plainly shows that appellee had no intention whatever of waiving his privilege; that he tried to bring himself within the protection of the Fifth Amendment to the Federal Constitution; that whatever he said that might be construed as a waiver of the protection of the Fifth Amendment to the Federal Constitution was the thought of the attorney for the Internal Revenue Department, was placed in the mouth of appellee by that person and was not at any time the thought of appellee.

The record shows that in almost every instance, after appellee refused to answer a question on the ground that the answer might incriminate or degrade him, the attorney representing the Internal Revenue Department said: "And in stating you refuse to answer that you might incriminate or degrade yourself you have in mind the violation of a state law and not a federal law."

We respectfully submit that his answers could not have subjected him to state prosecution, but they would undoubtedly have imperiled him in the federal jurisdiction.

It is hardly reasonable that appellee was thinking about

state laws or state court prosecutions. There was nothing connected with the investigation that could direct his attention to a danger of prosecution for violation of a state law. As stated by your Honors in the opinion filed in this case:

> "Nothing of state concern was involved. The investigation was under federal law in respect of federal matters. The information sought was appropriate to enable the burdeau to ascertain whether appellee had, in fact, made deductible payments in each year as stated in his return and also to determine the tax liability of the recipients."

The record shows that at the hearing appellee accounted specifically for all of the twenty-four thousand dollars ($24,000.00) of deductions shown in his returns excepting eleven thousand nine hundred ninety-nine dollars and ninety-five cents ($11,999.95). Near the end of the examination the attorney who represented the Federal Revenue Department asked appellee this blanket question (Rec., p. 27): "As to the balance, which is approximately eleven thousand nine hundred and ninety-nine dollars and ninety-five cents ($11,999.95), you wish to go on record as refusing to state the names of the persons or recipients of that money or amounts paid such persons?" To this appellee replied: "Yes, sir." The questioner then asked: "And you refuse to answer on the ground that such answer may tend to incriminate or degrade you?" To this he replied: "Yes."

This question covered the entire examination. Appellee's answer constituted a clear claim to the protection of the Fifth Amendment to the Constitution.

We respectfully submit that to hold that appellee did not claim the privilege of silence because of a fear of criminal prosecution in a federal court; that he, in fact, expressly waived the protection of the Federal Constitution at a hearing involving only questions of federal concern and that could result in a criminal prosecution only in a federal court, is to hold that he waived the very privilege which he was earnestly attempting to assert. With the utmost deference, we humbly submit that to construe his conduct as a waiver of his right to protection under the Fifth Amendment of the Federal Constitution is to deny him the protection which, in the lumbering and inept manner of a layman, he was attempting to claim. We further respectfully submit that such a holding places too narrow a construction upon what appellee said and did, and, in this respect, is not in accord with what this Honorable Court has uniformly said to the effect that the constitutional rights of the citizen should be liberally construed in order to effect the purposes they were intended to serve. This Honorable Court said, in Boyd v. United States, 116 U. S. 616, that:

> "Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security

of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen and against any stealthy encroachments thereon."

We respectfully call attention to the fact that the manner in which appellee was induced by counsel representing the Internal Revenue Department to agree that his answers would incriminate him only in a state court, is very remindful of entrapment. The conduct of the examination of appellee was not in accord with the sprit of the Fifth Amendment, as construed by this Honorable Court. The examination as conducted constituted a game that had for its purpose the destruction of appellee's constitutional right, under the Fifth Amendment, to refuse to answer incriminating questions. In each instance, after appellee asserted the privilege of silence, after he plainly claimed his right as guaranteed by the Fifth Amendment to refuse to give information that might tend to incriminate him, his questioner adroitly led him into a categorical acquiescence with the statement of the Examiner that he had in mind prosecution for violation of a state law, and not a federal law. Each time, after appellee refused to answer a question because the answer might incriminate him, the attorney suggested: "And in stating that you refuse to answer because you might give information

which might incriminate or degrade yourself you have in mind the violation of a state law, and not a federal law." This was a deliberate act on the part of his questioner to deprive him of the protection of the constitutional privilege with which he was earnestly attempting to shield himself, and was in direct violation of the rule stated by this Honorable Court in Counselman v. Hitchcock, 142 United States 547, where it is said:

> "It is an ancient principle of the law of evidence that a witness shall not be compelled, in any proceeding, to make disclosures or to give testimony which will tend to criminate him or subject him to fines, penalties or forfeitures."

We respectfully submit to this Honorable Court that, inasmuch as no question of state concern was being investigated at the hearing conducted by the revenue agent, there was no justification for the repeated suggestion of counsel who conducted the examination that appellee had in mind the violation of a state law, and not violation of a federal law. When, upon being asked a question that plainly could have elicited an answer tending to subject appellee to criminal prosecution in a federal court, and he refused to answer upon the ground that his answer might incriminate him, the questioner should have gone no further. He should not have tried to destroy appellee's asserted claim with the suggestion that the only apparent danger was prosecution for violation of a state law. Chief Justice Marshall said in Burr's Trial (1 Burr's Trial 244):

> "If the question be of such a description that an answer to it may or may not criminate the witness, according to the purport of that answer, it must rest with himself, who alone can tell what it would be to answer the question or not. If, in such a case, he say upon his oath, that his answer would criminate him, the Court can demand no other testimony of the fact."

In this case appellee said, on his oath, that his answer would (might) incriminate him. When he said this, the investigator should have demanded no further testimony and no further explanation of appellee's claim of privilege.

This record clearly shows that, throughout the entire hearing, he earnestly tried to bring himself within the protection of that part of the Fifth Amendment which provides that no person "shall be compelled in any criminal case to be a witness against himself."

His answers throughout disclose an attempt to avail himself of the privilege, but ignorance of exactly how to make the claim.

The record shows that the attorney who represented appellee at the hearing did not properly or sufficiently advise appellee of how to word his claim in order to make it effective.

Preceding the examination of appellee there was a colloquy between the attorney representing the Internal Revenue Department and counsel who at that time appeared for appellee. This is set forth verbatim in the record.

After submitting a statement accounting for some of the money which the revenue agent intended to ask about, and stating that appellee was willing "to let such amounts be restored to taxable income," counsel for appellee said:

> "This taxpayer did not know that a detailed report of such disbursements was required by the internal revenue authorities until said detailed report was recently requested of him by the revenue agent, Mr. Kirk. He has referred such request to his attorneys for investigation, and his attorneys find that form 1099 and accompanying affidavit required on form 1096 require a statement of all disbursements made in operating a business and does not provide a method whereby the report can be made in cases where, if made, the taxpayer making same would be held to give information which would tend to incriminate and degrade him and may lay him liable for prosecution for criminal offenses, for imprisonment, fines, penalties and forfeitures, and notwithstanding the Constitution of the United States protects the taxpayer to the extent that it will not require him to give information against himself touching such matters, or that may form a link in a chain of circumstances that might be sought as evidence against the person giving same. * * *. The taxpayer is willing to prepare and execute form 1099, giving the names of persons and amounts paid to them, respectively, who are engaged in actually assisting taxpayer in operating his business, and this information has just been furnished heretofore in this statement, and as to other disbursements made in the operation of his business which taxpayer cannot give without tending to incriminate and degrade himself,

taxpayer is willing to let such amounts be restored to taxable income if the internal revenue authorities believe that they were not proper business deductions" (Rec., pp. 18-19).

Counsel for the Internal Revenue Department then asked appellee's attorney this question: "I would like to ask Mr. Moore at this time whether he has criminal prosecution under state law or whether criminal prosecution under federal law in mind in arriving at the opinion he has just stated?" To this Mr. Moore replied: "I do not think I am required to answer that." After further discussion, Mr. Moore finally said: "I think I would state that we have particularly in mind a state law."

Following this the examination of appellee began. On page 20 of the record appears appellee's first refusal to answer a question. He stated that he refused to answer on the ground that he might give information that might incriminate and degrade him. Thereupon he was asked if he had in mind the violation of a federal law or state law. To this he replied: "A state law." Counsel then asked him: "And not a federal law? Is that right, Mr. Murdock?" Appellee replied: "Not that I know of." Thereupon counsel who represented appellee said: "I object to that question on the ground that it is immaterial; that the Government has no right to insist upon an answer as to what would be a state or federal statute in connection with which the witness might tend to incriminate himself."

We respectfully submit that it was manifestly unfair to

require appellee to specify what particular law, or kind of law, might be used to effect a criminal prosecution of him in the event that he answered the questions which he refused to answer. The result of these tactics was to defeat and destroy the efficacy of the constitutional protection with which he was attempting to shield himself and with which he was clearly entitled to be protected. He stated that answers to the questions might incriminate him. Inasmuch as the questions concerned only federal matters, they could have incriminated him only within the federal jurisdiction. This was a fact that was undoubtedly known to counsel who examined appellee, but which could hardly be expected to be known to a layman. Although ignorance of the law is ordinarily no defense, we respectfully submit that this familiar rule has never been carried to the extreme length of indulging against a lay citizen, with no legal training, the presumption that he knows and understands what particular criminal statutes may jeopardize him, and what particular jurisdiction may become the venue of a possible future prosecution of him. If he is required, after refusing to answer on the ground that his answer might incriminate him, to specify the jurisdiction in which he may be criminally prosecuted, he is compelled, at his own risk, to distinguish between legal niceties that may puzzle men trained in the law, and he is denied the protection that the Fifth Amendment is intended to give.

If the questions asked of appellee did not concern fed-

eral matters alone, if they were so innocent and touched upon such innocent subjects that there could be no reasonable danger of a criminal prosecution following answers being given to them, the refusal of a witness to answer them upon the ground that his answers might tend to incriminate him would be preposterous and untrue, and should be construed to constitute a willful and deliberate intention upon the part of the witness to refuse to give information. But if the questions so clearly and indisputably affect matters of federal concern, to wit, a citizen's sworn income tax return, that it is apparent to everyone that the answers of the witness would probably subject him to criminal prosecution in a federal court for perjury, and for defrauding the Government in violation of certain penal provisions of the Internal Revenue Law, the claim of the witness to the privilege of silence on the ground that his answers might incriminate him should be accepted, and the examination should stop. The witness should not be goaded or tricked by his examiner into conceding or agreeing that he had in mind prosecution in a state court, and not in a federal court.

For these reasons we respectfully submit that appellee's refusal to answer was predicated upon a claim broad enough to include the protection of the Fifth Amendment to the Constitution of the United States, and should not be construed to have been a waiver of that protection.

We further respectfully submit that in the case of Ballman v. Fagin, 200 U. S., page 186, this Honorable Court

held that the protection afforded by the Fifth Amendment is broad enough to justify a citizen in refusing to answer a question that might subject him to prosecution in a state court for violation of a state law. In that case your Honors said:

> "Not impossibly Ballman took this aspect of the matter for granted, as one which would be perceived by the Court without his disagreeably emphasizing his own fears. But he did call attention to another less likely to be known. As we have said, he set forth that there were many proceedings on foot against him as party to a bucket shop, and so subject to the criminal law of the state in which the grand jury was sitting. According to United States v. Saline Bank, 1 Peters 100, he was exonerated from disclosures which would have exposed him to the penalties of the state law."

We once more respectfully ask leave to call the attention of this Honorable Court to our contention that the effect of the demurrer filed by the Government to the sworn special plea of appellee was to admit the truth of the averments of the plea. The allegation contained in that plea was that appellee did not answer the questions because, if he had answered them, he would have given information which would have incriminated and degraded him, and have compelled him to become a witness against himself in a criminal case in violation of the Fifth Amendment to the Constitution of the United States, and have caused him to be subject to prosecution in a federal court

for violations of various laws of the United States (Rec., p. 15). In County of Dallas v. MacKenzie, 94 U. S. 660, it is said:

> "We think the plaintiff erred in demurring to the answer and thus admitting that the County Court had never exercised its power. * * * Instead of meeting this allegation by an issue of fact, the plaintiff by demurring admits its truth; and we do not see how, upon the pleadings, he can be deemed a holder for value."

In Sullivan v. Iron Silver Mining Co., 109 U. S. 550, it is said:

> "The fact that the vein or lode was known to exist as contemplated by the statute being well pleaded, although in general terms, is admitted by the demurrer (Eaton v. Southby Willes, 131; Postmaster General v. Ustick, 4 Wash. C. C. 347; Christmas v. Russell, 5 Wall. 290). In order to present the issue discussed in argument, the plaintiff should either have traversed the allegation or have replied that no claim for the vein or lode had been elected at the time in question."

In Fish v. McGann, 205 Ill. 179, at page 184, it is said:

> "A demurrer to a pleading admits the truth of the facts well pleaded, though it does not admit the conclusion sought to be drawn from them by the pleader (Compher v. People, 12 Ill. 290; Greig v. Russell, 115 id. 483; County of Christion v. Merigan, 191 id. 483). Where, as in the case here, a demurrer is interposed to a pleading, which the Court overrules, and the de-

fendant elects to abide by the demurrer, the judgment thereupon filed is conclusive of the facts confessed by the demurrer, and no proof of such facts is necessary other than that appearing upon the record. The facts alleged in the pleading are in such case admitted of record by the judgment of the Court upon the demurrer."

The following are a few of the cases in which this Honorable Court has held that the allegations of a pleading are to be taken as true on demurrer thereto:

U. S. v. U. P. R. Co., 98 U. S. 569;
Warren v. King, 108 U. S. 389;
Hyer v. Richmond Traction Co., 168 U. S. 471;
Rhode Island v. Mass., 15 Pet. 233;
Bacon v. Rives, 106 U. S. 99;
Angle v. Chicago, St. P. M. & O. R. Co., 151 U. S. 1.

We respectfully submit that if the Government intended to claim that appellee had waived his right to claim his constitutional privilege of refusing to divulge information that might tend to incriminate him it should have pleaded this by replication. By demurring to appellee's plea and electing to stand by the demurrer the Government admitted the truth of the plea, and should be held to be precluded from asserting that appellee waived his right to claim the protection of the Constitution as a justification for his refusal to answer.

In the opinion in this case your Honors state that leave to file the sworn special plea should have been withheld. You hold that the defense set up in the sworn special plea

was a matter of defense determinable under the general issue. Although this is true, we respectfully call attention to the fact that both the Government and the District Court considered the filing of this plea to constitute proper procedure in this case, and did not question or challenge the right of appellee to present the matters of defense set forth in the plea in that manner. Both appellee and the prosecution joined in this erroneous practice. The plea presented only a question of law. It did not present any question of fact to be determined by a jury. It was for this reason that counsel for appellee raised it by plea in order to crystalize an issue to be passed upon by the Court.

The section of the Revenue Act under which the internal revenue agent subpoenaed appellee and then attempted to compel him to give information concerning his income tax returns is unconstitutional because it does not confer upon a taxpayer, when required to disclose information in the form of testimony, immunity from indictment and prosecution based upon facts elicited from such testimony. This Honorable Court said, in Counselman v. Hitchcock, 142 U. S. 547:

> "We are clearly of opinion that no statute which leaves the party or witness subject to prosecution after he answers the incriminating question put to him can have the effect of supplanting the privilege conferred by the Constitution of the United States. * * * In view of the constitutional provision, a statutory enactment, to be valid, must afford abso-

lute immunity against future prosecution for the offense to which the question relates."

The statute which authorized the summoning of appellee, and by virtue of which the internal revenue agent required appellee to appear and testify, did not afford any immunity against future prosecutions for any offenses learned about through the medium of such compulsory examination of him. We respectfully submit that, inasmuch as the statute itself is clearly repugnant to the Fifth Amendment of the Constitution, an incongruous and anomalous situation arises when it is contended that appellee waived his right to claim constitutional protection from disclosing information at a hearing conducted pursuant to the invalid statute, or that he was required to make any claim under the circumstances.

The opinion of this Honorable Court in this case disposes of appellee's defense. The remanding of the case to the District Court for a jury trial is a mere formality, because nothing is left for a jury to decide. With the opinion of your Honors holding that appellee waived his right to avail himself of the protection of the Fifth Amendment to the Constitution, the trial court will be bound to direct the jury to find appellee guilty.

We respectfully submit that we earnestly believe that the record of this case shows that appellee attempted in the best way that he knew to avail himself of the protection of the Fifth Amendment, and that he did not at any

time intend to waive the privilege of standing upon his constitutional right to refuse to divulge information that might incriminate him. For this reason we humbly and respectfully petition this Honorable Court to restore this case to the docket and to grant appellee a rehearing.

Respectfully submitted,

EDMUND BURKE,
Springfield, Illinois,
HAROLD J. BANDY,
Granite City, Illinois,
Attorneys for Appellee.

Edmund Burke of Springfield, Illinois, and Harold J. Bandy of Granite City, Illinois, attorneys for Harry Murdock, appellee in the above-entitled case, herewith certify that the foregoing petition for a rehearing is presented in good faith and not for delay.

Dated this 15th day of December, A. D. 1931.

Edmund Burke,
Springfield, Illinois.
Harold J. Bandy,
Granite City, Illinois.

OPINION

SUPREME COURT OF THE UNITED STATES.

No. 38.—October Term, 1931.

The United States of America, Appellant, *vs.* Harry Murdock.	Appeal from the District Court of the United States for the Southern District of Illinois.

[November 23, 1931.]

Mr. Justice Butler delivered the opinion of the Court.

Appellee filed his individual federal income tax returns for 1927 and 1928, and in each year deducted $12,000 which he claimed to have paid to others. An authorized revenue agent summoned appellee to appear before him and disclose the recipients. Appellee appeared but refused to give the information on the ground that to do so might incriminate and degrade him.

He was indicted for such refusal and interposed a special plea averring that he ought not to be prosecuted under the indictment because, if he had answered the questions put to him, he would have given information that would have compelled him to become a witness against himself in violation of the Fifth Amendment and caused him to be subjected to prosecution in the court below for violation of various laws of the United States, as shown by a transcript of the questions asked and answers given which he included in his plea. The United States demurred to the plea on the grounds that it fails to show that the information demanded would have incriminated or subjected defendant to prosecution under federal law, and that defendant waived his privilege under the Fifth Amendment. The court overruled the demurrer and entered judgment discharging defendant.

The judgment necessarily determined that to require defendant to supply the information called for would be to compel him to incriminate himself and that therefore he did not unlawfully or willfully refuse to answer. Its effect, unless reversed, is to bar further prosecution for the offense charged. It follows un-

questionably that, without regard to the particular designation or form of the plea or its propriety, this court has jurisdiction under the Criminal Appeals Act.[1] *United States* v. *Barber*, 219 U. S. 72, 78. *United States* v. *Oppenheimer*, 242 U. S. 85. *United States* v. *Thompson*, 251 U. S. 407, 412. *United States* v. *Storrs*, 272 U. S. 652, 655. *United States* v. *Goldman*, 277 U. S. 229, 236.

The offense charged is defined: "Who willfully fails to . . . supply such information [for the computation of any tax imposed by the Act] at the time or times required by law or regulations, shall . . . be guilty of a misdemeanor".[2] Other provisions authorize resort to the district courts to compel attendance, testimony and production of books.[3] While undoubtedly the right of a witness to refuse to answer lest he incriminate himself may be tested in proceedings to compel answer, there is no support for the contention that there must be such a determination of that question before prosecution for the willful failure so denounced. By the very terms of the definition the offense is complete at the time of such failure.

Immediately in advance of the examination, appellee's counsel discussed with counsel for the Internal Revenue Bureau the matter of appellee's privilege against self-incrimination and stated that he had particularly in mind incrimination under state law. And at the hearing appellee repeatedly stated that, in answering: "I might incriminate or degrade myself", he had in mind "the

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[1] "A writ of error may be taken by and on behalf of the United States from the district courts direct to the Supreme Court of the United States in all criminal cases, in the following instances, to wit: . . .

"From the decision or judgment sustaining a special plea in bar, when the defendant has not been put in jeopardy." 18 U. S. C., § 682. 34 Stat. 1246. See also 28 U. S. C., p. 345 (2).

[2] "Any person required . . . to . . . supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this Act, who willfully fails to . . . supply such information, at the time or times required by law or regulations, shall . . . be guilty of a misdemeanor . . .". 26 U. S. C., § 1265. § 1114 (a), Revenue Act of 1926, 44 Stat. 116; 26 U. S. C., § 2146; § 146 (a), Revenue Act of 1928, 45 Stat. 835.

[3] 26 U. S. C., §§ 1257, 1258; 1122 (a) (b), Revenue Act of 1926, 44 Stat. 121. Superseded by 26 U. S. C., § 2617; § 617, Revenue Act of 1928, 45 Stat. 877.

violation of a state law and not the violation of a federal law". The transcript included in the plea plainly shows that appellee did not rest his refusal upon apprehension of, or a claim for protection against, federal prosecution. The validity of his justification depends, not upon claims that would have been warranted by the facts shown, but upon the claim that actually was made. The privilege of silence is solely for the benefit of the witness and is deemed waived unless invoked. *Vajtauer* v. *Comm'r of Immigration*, 273 U. S. 103, 113.

The plea does not rest upon any claim that the inquiries were being made to discover evidence of crime against state law. Nothing of state concern was involved. The investigation was under federal law in respect of federal matters. The information sought was appropriate to enable the Bureau to ascertain whether appellee had in fact made deductible payments in each year as stated in his return, and also to determine the tax liability of the recipients. Investigations for federal purposes may not be prevented by matters depending upon state law. Constitution, Art. VI, § 2. The English rule of evidence against compulsory self-incrimination, on which historically that contained in the Fifth Amendment rests, does not protect witnesses against disclosing offenses in violation of the laws of another country. *King of the Two Sicilies* v. *Willcox*, 7 State Trials (N. S.) 1050, 1068. *Queen* v. *Boyes*, 1 B. & S. 311, 330. This court has held that immunity against state prosecution is not essential to the validity of federal statutes declaring that a witness shall not be excused from giving evidence on the ground that it will incriminate him, and also that the lack of state power to give witnesses protection against federal prosecution does not defeat a state immunity statute. The principle established is that full and complete immunity against prosecution by the government compelling the witness to answer is equivalent to the protection furnished by the rule against compulsory self-incrimination. *Counselman* v. *Hitchcock*, 142 U. S. 547. *Brown* v. *Walker*, 161 U. S. 591, 606. *Jack* v. *Kansas*, 199 U. S. 372, 381. *Hale* v. *Henkel*, 201 U. S. 43, 68. As appellee at the hearing did not invoke protection against federal prosecution, his plea is without merit and the government's demurrer should have been sustained.

We are of opinion that leave to file the plea should have been withheld. The proceedings below are indicated by a chronological statement printed in the margin.[4] After demurrer—not shown by the record to have been disposed of—and motions for a bill of particulars and to suppress evidence which were denied, a plea of not guilty was entered. The case should then have been tried without further form or ceremony. 18 U. S. C., § 564. The matters set forth in the plea were mere matters of defense determinable under the general issue. Federal criminal procedure is governed not by state practice but by federal statutes and decisions of the federal courts. *United States* v. *Reid*, 12 How. 361. *Logan* v. *United States*, 144 U. S. 263, 301. *Jones* v. *United States*, 162 Fed. 417, 419. *United States* v. *Nye*, 4 Fed. 888, 890. Neither require such piecemeal consideration of a case. A special plea in bar is appropriate where defendant claims former acquittal, former conviction or pardon (2 Bishop New Criminal Procedure (2d ed.) §§ 742, 799, 805 et seq.) but there is no warrant for its use to single out for determination in advance of trial matters of defense either on questions of law or fact. That such a practice is inconsistent with

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[4] *1930*

January	23	Indictment returned.
February	6	Demurrer to indictment.
February	19	Additional special ground for demurrer.
February	25	Motion for bill of particulars.
May	27	Motion to suppress evidence and to restrain its use at trial.
		Motion for bill of particulars denied.
		Arraignment and plea of not guilty.
June	10	Argument on motion to suppress.
June	21	Motion to suppress denied.
July	1	Leave granted to file special plea.
		Special plea filed.
October	1	Demurrer to plea filed and hearing thereon set for October 13.
October	13	Second and third special pleas filed.
October	17	Demurrer to second and third special pleas filed.
		Hearing on demurrers.
October	18	Demurrer to first special plea overruled; demurrers to second and third special pleas sustained.
October	28	Opinion on demurrers.
1931		
February	3	Plea of not guilty withdrawn.
		Judgment for defendant on first special plea.
March	4	Appeal allowed.

prompt and effective administration of the law and is likely to result in numerous hearings, waste of courts' time and unnecessary delays is well illustrated by the record in this case. The indictment was returned January 23, 1930, the judgment before us was entered more than a year later, and it seems certain that more than two years will have elapsed after indictment before the case can be reached for trial.

Judgment reversed.

A true copy,

Test:

Clerk, Supreme Court, U. S.